

REMARKS

Favorable reconsideration of this application is respectfully requested.

Claims 40-44 are pending in this application. Claims 40, 42, and 44 were rejected under 35 U.S.C. § 102(e) as clearly anticipated by U.S. patent no. 5,644,148 to Kinzer. Claims 41 and 43 were rejected under 35 U.S.C. § 103(a) as unpatentable over Kinzer.

Addressing the above-noted rejections based on Kinzer, those rejections are traversed by the present response.

It is initially noted that independent claim 40 is amended by the present response to clarify features recited therein. Specifically, independent claim 40 now clarifies a structure of the insulating film being “provided on portions of said fourth semiconductor layer interposed between said third and fifth semiconductor layers and extending to reach said second semiconductor layer”. According to such a structure clarified in the claims, and with reference to Figure 3 in the present specification as a non-limiting example, the insulating film 48 provided on portions of the fourth semiconductor layer 44 interposed between the third semiconductor layer 43 and the fifth semiconductor layer 45 also extends to reach the second semiconductor layer 42. Such a feature clarified in independent claim 40 and is fully supported by the original specification and is clearly neither taught nor suggested by Kinzer.

The outstanding Office Action cites element 52 in Kinzer as corresponding to the claimed “second semiconductor layer” and cites elements 111, 112 as corresponding to the claimed “insulating film” in Figure 20 of Kinzer.<sup>1</sup> As is clear in Figure 20 in Kinzer no portion of insulating films 111, 112 extends to reach the second semiconductor layer 52.

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<sup>1</sup> Office Action of September 24, 2003, the paragraph bridging pages 2 and 3.

In such ways, amended independent claim 40, and the claims dependent therefrom, are believed to clearly distinguish over the applied art to Kinzer. Also, as claims 41 to 44 depend from independent claim 40, those claims are also believed to be allowable.

As no other issues are pending in this application, it is respectfully submitted that the present application is now in condition for allowance, and it is hereby respectfully requested that this case be passed to issue.

Respectfully submitted,

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